

Board Operations and Policy Development

Q What should our bylaws include?

A Bylaws comprise general guidelines for the way the board operates. They are not intended to delineate operating procedures. In most cases, it is best to avoid specificity.

Bylaws for the board of trustees should be customized to the needs of the school but should address the following issues:

- ▶ **General information:** number of directors (preferably a range, such as nine to fifteen); qualities and qualifications; selection process; procedures for filling vacancies; guidelines for trustee removal and resignation; term limits; general powers; fees and compensation
- ▶ **Officers:** number and titles of officers; officer selection process; job descriptions for officers; procedures for filling vacancies in officer positions; term limits
- ▶ **Meetings:** location and number of meetings to be held each year; policy on special meetings; quorum and voting rules; meeting format
- ▶ **Committees:** number and purpose of board committees; job description for each committee; procedure for creating a committee or taskforce
- ▶ **Miscellaneous:** fiscal year; rules of order; amendments

Resources



- Sample Bylaws – page 75
- Sample Clauses for Your Bylaws
- Bylaws Checklist



Best Practice Tip



Too often, start-up charter schools look at another organization's bylaws and just fill in the blanks for their own document. Although studying sample bylaws will prove useful, you will be a more effective board in the long run if you use this opportunity to have substantive conversations about your organization and your board. Have a healthy debate about the right number of board members, which committees are vital and need to be standing committees versus which can be task forces, what you will do with chronically absent board members, and so forth. This is also the right time to create the job description for the board and the individual performance expectations for trustees, which was mentioned earlier.



Online resources available at www.buildingexcellentschools.org

Q How often should we revisit our bylaws?

A Bylaws should be general enough so that they do not need continuous revision. In this, they are similar to a mission statement. But, just as with a mission statement, it is important to revisit the bylaws occasionally (every three to five years) to make sure they remain relevant. This is particularly true with organizations in the start-up phase; it may be necessary to live with the bylaws for a year or so to see what works and whether there are sections that need revision.

Developing Policies

Q What exactly is a policy?

A A policy is a critical and far-reaching decision made by a board of trustees.

A policy ...

- ▶ Is an idea that is embodied in a written document
- ▶ Is ratified by a legitimate authority
- ▶ Serves as a guide to action

The major policies of a nonprofit organization are created and ratified by its board of trustees. These are contained in a policy manual for easy reference, and are reviewed frequently to see if they are up to date. They should cover every aspect of the organization's business.

Policies are broad precepts or principles designed to influence and control future decisions, directions, and actions of the board. Boards should focus on broad organizational policies and leave operating policies and procedures to the administration. Through policy-making, the board is able to delegate authority and still retain ultimate responsibility and control. Policies also provide a framework in which other decisions can be made and the work of the board and staff carried out. Policies assure consistency, especially in difficult and stressful situations. And they minimize "re-deliberation" of matters on which the board has previously decided. Finally, policies define the ways in which the school wishes to work and the board wishes to govern.^{1, 2}

Resource



- Defining Policy



Q When is a policy needed and who can initiate one?

A Committees, the chair of the board, the school leader, other staff, parents, students, and community members can all recognize the need for and initiate a new institutional policy. Charter school boards might consider developing a new policy for the following situations:

- ▶ Issues arise that are not adequately/acceptably addressed by current board policies.
- ▶ Changes in operating practice have evolved over time so that the written policies do not reflect reality.

¹ *Charter Friends Guidebook*, p. 89.

² *The Policy Sampler*, pp. 4-5.

- ▶ External changes and trends have an impact on the charter school and the families being served—for example, the workforce and shifting demographics have brought new issues forward.
- ▶ The charter school has changed in size, scope, services offered, or methods of service delivery.
- ▶ Changes in federal or state laws may prompt adjustments in policy, such as, for example, changes in wage and hour laws, equal employment, safety, provisions of the applicable state charter school legislation, and so on.
- ▶ Current policy does not adequately reduce ambiguity and ensure uniformity of decisions across the charter school.

When such new issues and questions arise, the first question for the board to ask is: “What do our current policies say about that?” If the language of the current policies does not provide sufficient guidance, the next question is: “What policy should we adopt to cover this and similar situations in the future?”³

Resources



- Worksheet to Develop Policy
- Policy Checklist



policy development template

Q How are policies created?

A Upon identifying the need for a new policy, the board should follow these steps:

1. **Board-level discussion.** The full board should first discuss the need for the new policy and establish general considerations for the policy.
2. **Assign a team to draft a new policy.** Often the charter school leader is in the best position to draft policies for board review because she or he thinks about the school every day and is frequently most aware of its needs. However, since setting board policy is ultimately the board’s responsibility, a board-staff team of two can also take on this task. In either case, the board needs to clearly communicate to the team who will ultimately write the policy draft any concerns it has, and it must share any preferences regarding how the new policy will be approached.
3. **Write a first policy draft.** The writing team should develop a draft statement that responds to the issue or question at hand. The team may choose to adapt policies that have been drafted by other charter schools. Remember, the statement should not be overly specific. If a policy becomes too detailed, it is a sure signal that the board has moved beyond policy-making and has begun to invade staff administrative prerogatives.
4. **Ask legal counsel to review the draft policy.** Depending on the issue at hand, it may be important to bring the charter school’s legal counsel into the picture to review the policy draft. Although he or she should not be expected nor allowed to write policy, the attorney, who should be familiar with applicable charter school law and regulations, will certainly have many helpful suggestions, such as how new policies can be adopted in such a way that previous, related policies can continue to stand. By no means is legal review required of every policy draft under consideration.

³ *Charter Friends Guidebook*, p. 90.

is it needed?

is there a policy that covers it already?

is there an example we could modify for us?

5. **Present draft policy to the board for approval.** It is advisable to have a first reading of the draft policy at a board meeting, to give the writing team informal feedback. The writing team can then incorporate your suggestions and bring the final draft to the next board meeting, when the board can formally adopt it.
6. **Continue to review and revise board policies.** The board should review all its policies periodically to make sure they are still relevant and in compliance with applicable laws and regulations.⁴

Q **Is there a hierarchy of legal authority within which charter school board policies fit?**

A Yes. The hierarchy can be described in the following way:

1. Applicable federal and state laws, including IRS regulations
2. Charter school contract with the authorized chartering body
3. Articles of incorporation for the charter school
4. Bylaws of the charter school
5. Standing policies of the board of the charter school
6. Other one-time, short-term policies found in the charter school board minutes
7. Personnel policies and procedures
8. Administrative decisions made by staff based on, and/or consistent with, the above

No action or policy decision at any one level within this hierarchy may violate the rules set in the level above it.⁵

Q **What conflict of interest policies should our board adopt?**

A Should you worry about conflict of interest? Absolutely. The integrity of the board and the public perception of the organization is so important that you must be conscious of both real and perceived conflicts of interest—or any other practice that casts doubt on the ethics of the organization.

Conflict of interest exists when the personal or professional concerns of a board member or a staff member affect his or her ability to put the welfare of the organization before personal benefit.

At some point, most boards have to confront tension or conflict between the interests of the organization and the interests of an individual board member.

Example

The school is hiring a new bookkeeper and the board chair recommends his sister; other board members may (and should) question whether this is appropriate. On one hand, the board chair's sister is an experienced bookkeeper who, because of her personal connection to the organization, will be particularly committed to the work. On the other hand, the executive director may be reluctant to supervise the board chair's sister.

⁴ Ibid., pp. 90-91. *The Policy Sampler*, produced by Board Source (formerly the National Center for Nonprofit Boards), is an excellent source for determining which basic policies should be in place. It provides extensive checklists of policies that effective organizations have in place, and it comes with a diskette of sample policies that you can adapt for your specific needs.

⁵ Ibid., p. 89.

Conflicts of interest are difficult to weigh and balance because relationships among board members and the community are a part of the contribution board members make. In many cases, the perceived conflict of interest may simply “feel wrong” to some board members, although it might be within legal boundaries.

Example

true

The organization is buying a new computer, and a board member owns a computer store. The organization may well benefit from discounts and extra service by buying the computer at her store. It would be a mistake to prohibit working with board members as vendors. But the potential conflict should be noted and the board should decide that there is no conflict.

Most conflicts of interest deal with money and other forms of personal gain. Conflicts of interest generally happen innocently, as board members and staff members get to know one another. It is natural to want to do business with someone you know and trust. Any transaction that raises conflict of interest issues should be scrutinized very closely by the board, both because of the dynamic it creates within the board and because of the predictable skepticism with which the public will view the transaction, no matter how scrupulously a policy is followed.

Best Practice Tip



Three simple safeguards can go a long way toward preventing and avoiding conflicts of interest.

- 1) Establish a policy related to conflict of interest and require all board members to sign it when they join the board. The statement can be as simple as a short declaration, or can require detailed information about the board members' financial interests.

The policy should explain such matters as board members absenting themselves from votes when there is a potential conflict, getting bids from several sources if a board member or family member is involved, and prohibiting staff members from using the organization's time and resources for personal gain. The policy should include a procedure for the annual written disclosure by all board members of their business involvements with the school and their other board memberships. The information disclosed should be circulated to all board members and be updated throughout the year, as necessary.

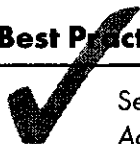
The Massachusetts Department of Education requires each board member to make an annual disclosure to the entire board of the total amount the board member received from the school during the previous year as a vendor of goods to the school and as a result of services rendered to the school. Massachusetts law requires this disclosure to be made on the annual reporting form filed by the school.

- 2) Establish disclosure as a normal practice. Board members should find it customary for someone to announce, for example, *"I have started to date a staff member and, as a result, feel that I must resign from the board. I would like to continue as a member of the fundraising committee, but not as a board member."* A board chair president might say, *"This next agenda item relates to joining a collaboration with other children's*

agencies. I'm going to ask board members who are also on one of these other boards to identify themselves and to participate in the discussion, but I will excuse them from the room for part of the discussion and for the vote." Such disclosures should be recorded in the meeting's minutes.

- 3) Perhaps even more than written policies, board and staff leadership must establish by example and attitude an atmosphere of personal integrity. Some situations may need only a brief, informal comment to maintain that climate, such as, "I know it's only \$24 but it's important to keep our finances straight." In others, a decision may be delayed because of the need to ensure that it has been made in the organization's best interests. Each member, by his or her daily words and actions, contributes to a culture of integrity and responsibility.⁶

Best Practice Tip



See the Massachusetts Department of Education draft publication, *The Charter School Administrative and Governance Guide: An overview of the law and regulations that cover charter schools*, which details the specifics of the Massachusetts conflict of interest law.

Resources



- Sample Conflict of Interest Policy #1 and #2 

- Conflict of Interest Disclosure Statement #1 and #2 

Q Whose responsibility is it to resolve conflicts among board members?⁷ *should be everyone's duty to state conflict resolved and*

A *HUGE!* It is advisable to let the board chair take the lead in resolving conflicts among board members. Managing *either resolve* the board is, after all, the chair's job. It is important for the chair to respond quickly because *it or someone needs to intervene* even small conflicts, if left unresolved, could lead to deeper resentments. The school leader should not be expected to mediate conflicts among board members as this can adversely affect his or her ability to work effectively with individuals serving on the board.

Q What should the board's role be in resolving grievances brought forward by staff or parents?

A The charter school should have an explicit grievance policy that is distributed to all parents and staff. The best grievance policies provide for resolution at the lowest possible level. Grievances should be brought to the board only after all other channels have been exhausted.

Resources



- Grievance Policy #1 and #2 

⁶ Adapted from *Nonprofit Board Answer Book*, pp. 184-6; *Board Café*, Vol. 4, No. 1, January 14, 2000.

⁷ Adapted from *Charter Friends Guidebook*, pp. 202-3.

Personnel Policies

Q What is the board's role regarding personnel?

A The board has a supervisory or oversight role only with respect to the charter school administrator, or school leader. The board hires, supervises, evaluates, compensates, and (if necessary) terminates the employment of the school leader. The leader, in turn, hires, supervises, evaluates, and makes compensation decisions within the scales and budget set by the board as provided for by the board-approved annual budget. However, the board is the ultimate employer of the staff in the sense that it is the board that makes personnel policy. Personnel policy may be recommended by the charter school leader and/or by a personnel committee, but only the board can make final decisions. The board gives final approval of wage and salary scales, fringe benefit programs, vacation plans, and so forth. Finally, the board, usually acting through its personnel committee, may occasionally be called upon to function as a grievance committee with respect to an employee who has a dispute with the charter school administrator and who seeks relief from the higher authority of the board.⁸

Jan Masaoka discusses personnel policy in the *Board Café*.⁹

The role of the board of trustees in personnel and human resource administration is frequently a sticky issue. Should the board approve all salaries, or just the executive director's? If a staff member has a grievance, should it come to the board? How can the board's finance committee members, for example, advise in the hiring of accounting staff, but not usurp the hiring role of the executive staff? How can a board member appropriately give feedback to the executive director on the behavior of a staff person?

Each organization will want to choose its own guidelines on these sensitive and important issues. Here is one sample set of guidelines, following the principle that the board as a whole governs the organization, while individual board members can be helpful advisors to staff.

1. **Committee(s):** The board can choose how to delegate personnel-related work; the most common choices are a standing (permanent) HR committee of board members, an HR task force (temporary) of board members, a board-staff standing committee, or a board-staff task force. Committee members might include the staff HR director (if there is one) or executive director and/or nonboard volunteers (such as an HR attorney). The HR committee may also be responsible for developing plans and strategies for recruiting and utilizing volunteers, or the HR committee may look only at paid personnel. In the following examples, we assume a board-staff committee or task force that works only with matters related to paid staff.
2. **Personnel policies and employee manual:** The executive director is responsible for ensuring the dissemination and implementation of personnel policies and procedures, and that the policies are reviewed and approved by the board. At least every two years, the HR committee reviews the policies with staff and, if appropriate, drafts changes or a complete revision.

⁸ *Charter Friends Guidebook*, p. 191.

⁹ *Board Café*, Vol. 5, No. 6, June 27, 2001.

3. **Salary schedule:** The executive staff drafts a schedule of salaries (salary ranges for each position or category), which is reviewed by the HR committee or task force. This ensures that the board has considered such strategic matters related to salaries as (1) whether the schedule is in line with the organization's values, (2) whether there is appropriate internal equity/differences among positions and departments, (3) whether specific positions are appropriately placed on the scale, (4) whether compensation is in line with that at similar organizations, and (5) whether the compensation supports (rather than hinders) the organization's ability to recruit qualified staff. The HR committee or task force sends the salary schedule to the whole board for approval.
4. **Salary implementation:** Once a year, the HR committee or task force reviews the specific salaries of the staff (by name and position) against the salary schedule, to ensure that no one is paid outside the range for his or her position. The committee's job is NOT to review whether any individual has the right salary, but to protect against favoritism and ensure compliance with the salary schedule.
5. **Benefits:** The benefits schedule (health insurance, long-term disability insurance, 401K, and so forth) is reviewed annually as part of the budget process, with costs projected for the coming year. The HR committee should review the benefits package at least every two years and can suggest changes (additions or subtractions), along with the financial implications, to the executive director and/or the board's finance committee.
6. **Hiring:** One or two board members may sometimes help with hiring. A common example is having the board treasurer participate in the interviewing and hiring of the CFO or accountant. It should be clear that the final decision is made by the staff person to whom the new hire will report. In this instance, individual board members are acting as advisors to staff.
7. **Grievances:** Grievances on the part of employees must first go through the written procedures outlined in an employee policies manual. If an individual has exhausted the grievance process and that process has been documented, he or she can be permitted (if it is so written in the policies) to raise a grievance to either the board chair or the board's HR committee, which then acts as the final arbiter.

Occasionally, serious concerns about the organization's management—for example, the illegal use of funds, sexual harassment or discriminatory behavior by the executive director, or other serious concerns of a staff member—arise that cannot be taken up in the grievance process. One way to address this is to allow staff members to raise such concerns with the board chair. When other board members hear such complaints, they have a responsibility to direct the staff person to the board chair. By limiting the recipient of such charges to the chair, a disgruntled staff member can't try to develop allies on the board against the executive staff, but can still bring an organizational matter to the attention of the board.

or grievance committee

Q How does the board evaluate the school leader?

A It is the responsibility of the full board to evaluate the school leader on an annual basis. The evaluation should have specific objectives:

1. Analyze and evaluate the leader's performance during the entire review period.
2. Ensure a joint process in which the school leader has an opportunity to provide input on performance, results, goals, and career development plans.
3. In a written report, inform the school leader of the board's assessment of his or her performance and how it can be improved.
4. Jointly update or revise agreements on job and performance expectations and objectives.
5. Jointly develop performance improvement and career development plans.
6. Reward performance according to results achieved and behaviors demonstrated.

A charter school leader's performance should be measured relative to his or her job description and will likely cover the areas of staff relations, administration, planning, educational program, leadership, fiscal management, external public relations, effectiveness in working with the board to meet the requirements of the charter and the overall strategic plan, and effectiveness in helping the board achieve its own accountability.¹⁰

The performance review process should be structured as follows:

1. **Determine who will be responsible for conducting the performance review process.** Appoint a committee or task force to conduct the review. It is not advisable to involve the full board. In the early days of your charter school, this committee or task force should be chaired by a board member, have two other board members on it, and then have nonboard members with human resource and evaluation expertise.
2. **Develop the performance review process and timetable.** The committee or task force should develop a written evaluation instrument and a timetable for the process, with the input of the school leader. Then the documents should be given to the full board to adopt as official procedure.
3. **Set performance expectations for the school leader:** The committee should begin by reviewing the current written job description for the school leader, relevant sections of the charter school education plan, as well as the school's strategic plan, if one exists, and the past performance of the school leader (if applicable). It is very important to link the performance review directly to the job description, so a good first step is to update or review the job description. If a job description is not in place, then developing one should be a high priority of both the board and the school leader. The job description should be results-oriented and should avoid details about how the job is to be done.
4. **Conduct the performance review.** The committee should conduct the performance review according to the established timetable.
5. **Develop a performance action plan.** The school leader then develops an action plan based on the results of his or her performance review. This plan should identify areas of strengths and weaknesses and strategies for continued professional growth. The plan can also identify supportive roles that the board can play.

¹⁰ *Charter Friends Guidebook*, p. 196.

6. **Review the process.** After the performance review process has been completed, it is good practice for all participants in the process to review it to determine what worked, what didn't, and what changes would strengthen the process in the future.¹¹

Discussion Item

“Ask the school leader to write a self-evaluation as part of the process. The board should think long and hard before deciding to interview staff. This should rarely be necessary and should happen only with the school leader's knowledge and ideally should be conducted by an outside professional, not by a board member.”

Resources



- Performance Appraisal Process for the Executive Director
- Self-Evaluation for the Executive Director



Q What if there is conflict with the school leader?

A The best way to resolve conflicts is to have sound policies in place before conflicts actually arise. There are a number of common areas of conflict between boards of trustees and school leaders.

1. **Authority and responsibility divided between the administrator and the board:**
 - ▶ Means of accountability for administrator to the board
 - ▶ Degree of autonomy available to the administrator in decision-making and action
 - ▶ Amount of information board needs to feel informed about its work
 - ▶ Level of policymaking in which the board engages
 - ▶ Level of financial responsibility the board undertakes to keep the charter school solvent
2. **Authority and responsibility divided between the board chair and the school leader:**
 - ▶ Who serves as spokesperson for the charter school
 - ▶ Amount of information the board chair needs
 - ▶ Evaluation of the school leader's performance
3. **Level of access to the board of directors by line and mid-level staff:**
 - ▶ Budget allocations between programs
 - ▶ Personnel issues and grievances¹²

Resource



- Conflict Between the Board and the Executive - page 79

¹¹ Ibid., p. 198.

¹² Adapted from *Charter Friends Guidebook*, pp. 201-202.